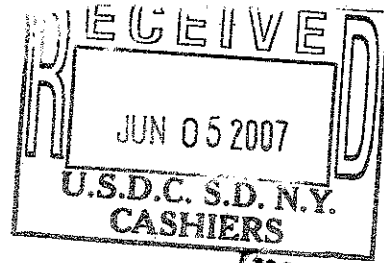


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**JUDGE CROTTY**

Attorneys for Plaintiff AESYS Technologies, L.L.C.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**07 CIV 4796**

----- x  
AESYS TECHNOLOGIES, L.L.C.,

Plaintiff,

-against-

CONTINENTAL INSURANCE COMPANY,

Defendant.  
----- x

No.  
ECF CASE

**COMPLAINT**

Plaintiff AESYS Technologies, L.L.C. ("AESYS"), by its attorneys, O'Hare Parnagian LLP, as and for its Complaint against defendant Continental Insurance Company ("Continental"), respectfully alleges, upon knowledge with respect to itself and its own acts and upon information and belief with respect to all other matters, as follows:

**NATURE OF THE ACTION**

1. This is an action for breach of contract and for an account stated by AESYS, a manufacturer of boilers, pressure vessel equipment, and heating, ventilating and air-conditioning systems. It stems from an agreement dated on or about March 27, 2002 (the "Agreement") by and among AESYS, Continental, Glens Falls Insurance Company ("Glens Falls"), Firemen's Insurance Company of Newark, New Jersey ("Firemen's," and, collectively with Continental and Glens Falls, the "Insurance

Companies”), and American Casualty Company of Reading, PA (“American”), pursuant to which the Insurance Companies agreed, among other things, to pay the costs incurred by AESYS in connection with the work of its Associated Counsel (as defined in the Agreement) in respect of certain lawsuits (the “Underlying Lawsuits”).

2. For a period following execution of the Agreement, the Insurance Companies paid the costs of Associated Counsel.

3. However, beginning in or about August 2005, the Insurance Companies began to pay less than the full amounts due and owing to AESYS for the costs of Associated Counsel, or failed to pay at all.

4. The amounts now due and owing to AESYS for its costs of Associated Counsel aggregate approximately \$81,551.86. AESYS seeks by this action to recover such amounts as damages.

### **PARTIES**

5. AESYS is a limited liability company organized and existing under the laws of State of Delaware. Each of the members of AESYS is either a citizen of New Jersey or Pennsylvania. AESYS maintains its principal place of business at 693 North Hills Road, York, Pennsylvania.

6. Continental is a corporation organized and existing under the laws of New Hampshire. It maintains its principal place of business at 333 South Wabash Avenue, Chicago, Illinois.

7. On or before December 31, 2006, Glens Falls and Firemen’s merged with and into Continental, which succeeded to all the former firms’ rights, assets, debts and liabilities.

**JURISDICTION AND VENUE**

8. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1332(a) because AESYS and Continental are of diverse citizenship and the amount in controversy is in excess of \$75,000, exclusive of interests and costs.

9. Venue is proper in this Court because, in the Agreement, AESYS and Continental agreed to submit to the personal jurisdiction of federal and state courts in New York County, selected those courts as forums for resolution of any disputes arising from it, and waived any objection they might have to the laying of venue in those courts.

**FACTS**

10. On or about March 27, 2002, each of the Insurance Companies, American, and AESYS entered into the Agreement.

11. Pursuant to the Agreement, the Insurance Companies agreed, among other things, to make prompt payment to AESYS for the full reasonable and necessary defense costs, including fees and disbursements, incurred by AESYS in connection with the work of its Associated Counsel in respect of the Underlying Lawsuits.

12. Since 2002, AESYS has invoiced the Insurance Companies or their agent for these purposes, CNA Member Insurance Companies ("CNA"), on approximately a monthly basis for such costs.

13. Such invoices set forth, with particularity, the names of the attorneys and staff providing services as Associated Counsel; the tasks in respect of which such attorneys and staff worked; the time spent by such attorneys and staff on such

tasks, generally in 1/10 hour increments; and the hourly billing rates for each of such attorneys and staff.

14. From approximately April 2002 through approximately July 2005, CNA paid the invoices presented to it by AESYS.

15. However, beginning in or about August 2005, CNA began paying less than the full amount of the invoices presented to it by AESYS, or made no payment at all.

16. AESYS, on its own or through its Associated Counsel, repeatedly objected to CNA in respect of the delinquencies and, on multiple occasions, provided to CNA duplicate invoice and summary information in respect of the underpaid and unpaid invoices.

17. CNA did not object to the invoices within a reasonable time or accepted the invoices as correct.

18. Repeatedly over the last many months, and as a courtesy, AESYS presented to CNA summaries of the amounts owing to AESYS as and for the costs of Associated Counsel.

19. Most recently, on or about June 4, 2007, and as a courtesy, AESYS presented to CNA a summary of the amounts owing to AESYS as and for the costs of Associated Counsel through May 2007.

20. An excerpt of such summary is attached hereto as Exhibit A.

21. A total of at least \$81,551.86 is now due and owing by the Insurance Companies (i.e., by Continental, as a result of the merger of Firemen's and Glens Falls with and into Continental) to AESYS under the Agreement.

**COUNT I**

**(Breach of Contract)**

22. AESYS repeats and realleges the preceding paragraphs as if fully set forth herein.

23. AESYS, Continental, Glens Falls, and Firemen's, together with American, entered into the Agreement.

24. Glens Falls and Firemen's subsequently merged into Continental, which succeeded to all the former firms' rights, assets, debts and liabilities.

25. AESYS has duly performed under the Agreement.

26. Continental has breached its duties to AESYS under the Agreement by failing and refusing to pay \$81,551.86, which is now due and owing.

27. By reason of Continental's breach of the Agreement, AESYS has suffered and will continue to suffer damages of \$81,551.86, plus interest thereon, costs, expenses and disbursements, and all other reasonably foreseeable consequential damages.

**COUNT II**

**(Account Stated)**

28. AESYS repeats and realleges the preceding paragraphs as if fully set forth herein.

29. The invoices, covering the periods from August 2005 through May 2007 and indicating a total amount due of \$81,551.86, see summary at Exhibit A, were presented to Continental and were not objected to within a reasonable time or were accepted as correct by Continental.

30. Continental failed and refused to pay the amount due and owing under those invoices.


31. By reason of Continental's failure and refusal to pay the amount due and owing, AESYS has suffered and will continue to suffer damages of \$81,551.86, plus interest, costs, expenses and disbursements, and all other reasonably foreseeable consequential damages.

WHEREFORE, AESYS respectfully requests judgment against Continental as follows:

- (a) On Counts I and II, an award of compensatory damages in the amount of \$81,551.86, plus interest thereon, costs, expenses and disbursements, and all other reasonably foreseeable consequential damages; and
- (b) Such other and further relief, including attorneys' fees where appropriate, as the Court may deem just and proper.

Dated: New York, New York  
June 5, 2007

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Attorneys for Plaintiff  
AESYS Technologies, L.L.C.

## **Exhibit A**

Exhibit A

**AMOUNTS OWING  
FROM DEFENDANT TO PLAINTIFF FOR  
LEGAL FEES AND DISBURSEMENTS OF  
ASSOCIATED COUNSEL**

**JUNE 5, 2007**

<b>Month Covered by <u>Invoiced Amounts</u></b>	<b><u>Amounts Due</u></b>
August 2005	\$1,157.60
October 2005	324.38
November 2005	1,031.37
December 2005	4,883.75
January 2006	5,518.89
February 2006	3,049.29
March 2006	3,441.56
April 2006	3,863.67
May 2006	1,908.10
June 2006	666.46
July 2006	5,621.31
August 2006	4,779.50
September 2006	5,810.25
October 2006	1,166.93
November 2006	5,065.99
December 2007	7,263.15
January 2007	6,114.00
February 2007	4,037.00
March 2007	6,702.00
April 2007	6,349.66
May 2007	<u>2,797.00</u>
Total amounts due	<u>\$81,551.86</u>